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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,127	10/13/2004	Richard Hugh Clark	TS7609US	9323

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Shell Oil Company
Intellectual Property
PO Box 2463
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EXAMINER	
MCAVOY, ELLEN M	
ART UNIT	PAPER NUMBER
1797	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/511,127	CLARK ET AL.	
	Examiner	Art Unit	
	Ellen M. McAvoy	1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *26 February 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-8* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-8* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 1 is still rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 20 of U.S. Patent No. 7,189,269 B2. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patent claims a process for preparing a fuel composition comprising the step of blending a Fischer-Tropsch derived gas oil, an oxygenate, and a base fuel which may be a petroleum derived gas oil which appears to meet the limitations of independent method claim 1 which comprises the step of adding to a petroleum derived gas oil a volume amount of a Fischer-Tropsch derived gas oil. Applicants allow for the addition of oxygen-containing compounds to the fuel composition as set forth on page 8 of the specification.

In response applicants argue that the claims are drawn towards a very specific method of increasing the cetane number of a gas oil product based on petroleum derived gas oil which is

not taught in the cited prior art. This is not deemed to be persuasive because method claim 1 comprises the step of "adding to the petroleum derived gas oil a volume amount of a Fischer-Tropsch derived gas oil .." which does not differ from claim 20 of the patent which is drawn towards a "process for the preparation of a fuel composition...comprising blending a Fischer-Tropsch derived gas oil (ii) and an oxygenate (iii) with a base fuel (i)."

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-8 are still rejected under 35 U.S.C. 103(a) as being unpatentable over Suppes (6,056,793) and Berlowitz et al (6,663,767), considered separately.

Applicants' arguments filed 26 February 2008 have been fully considered but they are not persuasive. As previously set forth, Suppes discloses a composition suitable as a compression-ignition fuel, i.e., a diesel fuel, which comprises from about 30 to about 95 mass % of a light synthetic crude or syncrude, preferably from Fischer-Tropsch synthesis, and from about 5 to about 70 mass % of a blending stock wherein the blending stock has an average molecular weight less than the average molecular weight of the light syncrude. Suppes teaches that the blend results in an improvement in one or more desirable fuel properties including, but not limited to, pour point temperature, viscosity and emissions generated during combustion in a diesel engine. See column 4, line 66 to column 5, line 44. Although cetane number is not set

forth, Suppes teaches that the cetane number of the composition is preferably greater than 35 and more preferably greater than 45. See column 5, lines 38-41. Suppes sets forth in Table 5 that the high cetane number of light syncrude allows blending with several different blend stocks while maintaining cetane numbers above 40. Applicants' invention differs by the proviso in independent claim 1 that "wherein the volume amount of added Fischer-Tropsch derived gas oil is less than the volume amount which would be added if linear blending is assumed". Although not set forth in Suppes, it is not clear how this proviso distinguishes over the prior art since the blending components and the amount of each component may be the same.

In response applicants argue that in column 19, lines 58-59, Suppes teaches that the biodiesel mixtures showed an almost linear impact of concentration on cetane number, and that in column 19, lines 61-63, Suppes teaches that the biodiesel increased the cetane number. Applicants argue that there is no indication that the syncrude increased the cetane number, particularly non-linearly. This is not deemed to be persuasive because applicants are pointing to a specific example containing the effect of an additional component, namely ethanol, and the disclosure of Suppes is not so limited. Further, Suppes teaches in column 19, lines 41-45, that generally synthetic fuels display "impressively high cetane numbers, sufficiently high to allow blending with low cetane fuels to obtain a better combination of cetane number and pour point." Thus the examiner maintains the position that Suppes meets the limitations of the above rejected claims.

As previously set forth, Berlowitz et al ["Berlowitz"] disclose a diesel fuel blended fuel composition which comprises an undercut conventional diesel fuel and a Fischer-Tropsch derived diesel fuel. Berlowitz teaches that the blend demonstrates better than expected emissions

and a reduced sulfur content when used in a diesel engine. See column 2, lines 17-63. The Fischer-Tropsch derived diesel fuel is set forth in columns 3-4 and the examiner is of the position that this meets the limitations of the Fischer-tropsch derived gas oil of the claims. The blended fuel composition was subjected to engine testing wherein the blended diesel fuel was compared to conventional petroleum diesel fuels. Berlowitz teaches that significantly lower emissions were produced from the diesel fuel blend when compared to two different conventional diesel fuels. See column 6, line 59 to column 7, line 40. Applicants' invention differs by the proviso in independent claim 1 that "wherein the volume amount of added Fischer-Tropsch derived gas oil is less than the volume amount which would be added if linear blending is assumed". Although not set forth in Berlowitz , it is not clear how this proviso distinguishes over the prior art since the blending components and the amount of each component may be the same.

In response applicants argue that although cetane number is mentioned in column 2, line 41, there is no discussion of any relationship between the cetane number and the concentration of components. Applicants argue that Berlowitz does not teach applicants claimed invention which is a very specific method of increasing the cetane number of a gas oil product which involves adding less than a particular amount of Fischer-Tropsch derived gas oil. This is not deemed to be persuasive because the method of the claims includes the step of "adding to the petroleum derived gas oil a volume amount of a Fischer-Tropsch derived gas oil" which is clearly taught by Berlowitz as outlined above. As taught by applicants in the specification on page 1, it is known that petroleum derived gas oils have generally a lower cetane number than gas oils derived from a Fischer-Tropsch process. Blends of petroleum derived gas oils and Fischer-Tropsch derived gas oils in wide ranging amounts are known as evidenced by Berlowitz set forth above.

THIS ACTION IS MADE FINAL. Applicants are reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ellen M. McAvoy whose telephone number is (571) 272-1451. The examiner can normally be reached on M-F (7:30-5:00) with alt. Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola can be reached on (571) 272-1444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ellen M McAvoy/
Ellen M McAvoy
Primary Examiner
Art Unit 1797

EMcAvoy
May 30, 2008